IN THE

Supreme Court of the United States

OCTOBER TERM, 1924.

No. 310.

THE ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY, *Appellant*,

vs.

THE UNITED STATES, *Appellee*.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

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vs.

THE UNITED STATES.

STATEMENT OF THE CASE.

This case comes before this Court on appeal from a final judgment of the Court of Claims dismissing a petition filed by appellant seeking to recover $11,818.08 for certain freight transportation furnished the United States. (Record p. 10.)

It appears from the petition and findings of fact that the transportation was furnished on seven bills of lading in July and October, 1916, and May, June and November, 1917. Before the case was submitted four of the items were abandoned, so that as the case was submitted to the Court of Claims the claim was confined to three items, set out in finding VI (record p. 6) as follows:

Bill No.	Bill of Lading	Amount Claimed	Amount Paid	Difference
G-480-A	Oct. 26, 1916	$2,549.08	$810.60	$1,738.48
3055-A	May 23, 1917	3,068.84	464.50	2,604.34
4732-A	May 26, 1917	566.80		566.80
				$4,909.62

The amounts claimed were computed on the basis of regularly published freight rates less proper land-grant deductions, and the carrier's bills were so rendered. The Government accounting officers, however, made disallowances and reduced the payments accordingly. Some of the disallowances were based on the application by analogy of rates of Class D published for the transportation of emigrants' movables and household goods, to which the Comptroller of the Treasury had held the Government was entitled when shipping military impedimenta. The remainder of the disallowances were on the ground that under certain rulings of the Comptroller of the Treasury the Government was entitled to the carriage of one carload of military impedimenta free with each twenty-five passenger fares, on the authority of the special baggage car tariffs referred to in paragraph II of the findings of fact. See paragraph V of the findings (record, p. 6).

The disallowances were improper and should not have been made, as the Court of Claims has held in numerous decisions. The right of the Government to the emigrants' movables rate was denied in the case of *The A. T. & S. F. Ry. Co.*, No. 33681, decided December 1, 1919, 55 Ct. Cls. 525 (no opinion). The right of the Government to the free carriage of one carload of military impedimenta with every twenty-

five passenger fares was denied in *Missouri Pacific Railroad Co. vs. United States*, decided June 13, 1921, 56 Ct. Cls. 340. Both cases cited are leading cases and have been followed in every similar case since submitted to the Court of Claims.

It follows, therefore, that on the merits the plaintiff's claim to be paid the balance due it, *i. e.*, the difference between what it claimed and should have been paid on the basis of lawful freight rates less land-grant deductions, and what it actually was paid on the basis of the inapplicable emigrants' movables rate and the free baggage car provisions of the tariffs improperly applied by the Government accounting officers, was good. As to all the items in question, however, the claim was denied by the Court of Claims, not on the merits but on other grounds, as follows:

BILLS 3055 AND 4732.

The balances claimed on these bills are $2,604.34 and $566.80, respectively. These two items were included in the statement of claim incorporated in a petition filed by the plaintiff in another and earlier case, filed September 20, 1920, Court of Claims No. 34697. (The amounts claimed in the former case were not exactly the same as here, but the items were the same, that is, the claim was on account of the same service on Government bills of lading identified by carrier's bills 3055 and 4732). The report of the Treasury Department in that case stated that no deduction had been made from bills 3055 and 4732 "on account of the cause of complaint set forth in the petition." That case was submitted on an agreed statement of facts based on the report of the Treasury Department which was adopted by the Court as

its findings of fact, on which it rendered judgment for $22,624.78. One of the findings recited that "the numbers and amounts referred to in the foregoing paragraphs constitute the component parts and sum total of the said $22,624.78 and are the only items in question in the case at bar." Bills 3055 and 4732 were not mentioned in the agreed statement of facts nor in the findings in that case. (Finding VIII, record page 7).

The fact is, the two bills in question, 3055 and 4732, had been erroneously included with the others incorporated in the statement of claim accompanying the petition in case No. 34697. The Treasury Department reported the fact that no deduction had been made "from these bills on account of the cause of complaint set forth in the petition." They were eliminated from consideration and were not included in the agreed statement of facts on which that case was submitted, and of course, were not included in the judgment rendered. In effect, the plaintiff took a non-suit on those two items.

They were then included in the petition filed in the present case, August 22, 1922, the plaintiff setting up the correct charges due on the basis of freight rates less land-grant deductions, the amounts already paid by the Government on the basis of the erroneous application of the free baggage car provisions of the tariffs, and its claim for the differences still due and unpaid.

The Court of Claims held that there could be no recovery because the items in question had been included in the petition in a former case in which judgment had been rendered, that they were "involved in the controversy," and no further claim could be made, citing section 178 of the Judicial Code. Opinion of the Court of Claims, record pages 9-10.

BILL G-480.

On this bill the plaintiff claimed $1,738.48, being the difference between the correct charges on the basis of freight rates less land-grant deductions and the amounts paid by the Government on the basis of the erroneous application of the free baggage car provisions of the tariffs. For the service in question, on bill of lading dated October 26, 1916, the plaintiff had presented a bill for $2,549.08, which was settled by the Auditor for the War Department, May 10, 1920, allowing $856.12 and disallowing $1,692.96. The Government check for the amount allowed was cashed. So far as this settlement is concerned it does not appear that the plaintiff at the time made any protest or objection to the settlement nor appealed to the Comptroller of the Treasury, as it might have done. But suit was filed August 22, 1922, within six years from the date of the bill of lading. (Finding IX, record page 7).

The Court of Claims held that "the failure to indicate that the acceptance of the Auditor's allowance was under protest and with a purpose to proceed further bars recovery in this suit." Opinion, page 9.

SPECIFICATION OF ERRORS.

1. The Court of Claims erred in deciding as a conclusion of law that upon the findings of fact the plaintiff is not entitled to recover, and in dismissing the petition.

2. The Court erred in deciding that as to bills 3055 and 4732 there could be no recovery because the items in question had been included in the petition in a former case, although not in the agreed statement of

facts on which the case was submitted and not included in the judgment rendered.

3. The Court erred in deciding that as to Bill G-480 there could be no recovery because of the plaintiff's "failure to indicate that the acceptance of the Auditor's allowance was under protest and with a purpose to proceed further."

THE ARGUMENT.

BILLS 3055 AND 4732.

The fact that they were included in the petition in another case, but not in the agreed statement of facts on which the case was submitted and not included in the judgment rendered, does not constitute a bar to another suit to recover the amounts properly due thereon.

Sections 178 and 179 of the Judicial Code are as follows:

> "Sec. 178. The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.
>
> Sec. 179. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy."

They do not apply to this case because these items never proceeded to final judgment. They were admittedly not included in the agreed statement of facts on which the former case was submitted, and on which

the court made its findings of fact, and were not included in the judgment. That case embraced a great many items. Each item was a "claim" in itself. The fact that part of the claims proceeded to final judgment and were paid does not constitute a bar, as a final judgment, to other claims which were withdrawn and were not submitted for judgment.

We reply on *Spicer vs. United States* (1869), 5 Ct. Cls. 34, and *Book* vs. *United States* (1896), 31 Ct. Cls. 272.

In the *Spicer* case the plaintiff had sued for breach of contract in refusing to inspect and receive certain horses. On demurrer, his petition was dismissed because it failed to allege that he owned and tendered the horses. He filed a new suit making the suggested allegations as to ownership and tender. The Government pleaded the judgment in the former suit, and relied, not only on the general principles of estoppel and *res judicata,* but specifically on a provision contained in sec. 7 of the act of March 3, 1863 (12 Stats. 765)—"that any final judgment rendered against the claimant on any claim prosecuted as aforesaid shall forever bar any further claim or demand aginst the United States arising out of the matters involved in the controversy." The Court of Claims held that the act did not change the rule of the common law and was not intended to do more than attach to final judgments of the Court of Claims the conclusiveness which the common law ascribes to the final judgments of all courts of competent jurisdiction; that the former judgment to be a bar must be on the merits; and that in the particular case the second petition, by reason of new averments, being not objectionable to the de-

murrer in the first case the issue was changed and the first judgment was not *res judicata.*

In the *Book* case, the plaintiff's suit remained pending for a long time awaiting the decision of a test case in the Supreme Court and finally on motion of the Attorney General was dismissed for non-prosecution. The plaintiff's attorney did not have notice of the motion and the Attorney General did not then know that the case was awaiting the decision in a test case. After the end of the term the dismissal was discovered by the plaintiff's attorney and he moved to reinstate the case. The Government then set up the judgment of dismissal as one which made the case *res judicata.* The Court held that the dismissal was not a bar, following the *Spicer* case. Quoting from the opinion:

> "The leading case in this court on questions of *res judicata* is that of *Spicer* (5 Ct. Cls. R., 34). It is authoritative upon the question presented, and holds that in this court, as in all others, a judgment does not bar a second suit unless the decision was upon the merits. Judgments of non-pros and non-suit never constitute an estoppel. The plaintiff pays costs and brings a second action. The one simply establishes the fact that he did not prosecute his suit, and the other that his proof was not sufficient to maintain it. The only penalty incurred in such cases is that he must pay costs incurred before vexing the defendant by a second suit."

The general rule is stated in 15 Ruling Case Law 949, sec. 429 *et seq.*

In its opinion in the present case the Court refers to *Vaughn* vs. *United States,* 34 Ct. Cls. 342, and *United States* vs. *Frerichs,* 124 U. S. 315, 320. In the

Vaughn case the plaintiff, a letter carrier, recovered a judgment for $211.57. Later at the same term he moved for a further allowance supporting his motion with a stipulation on the part of the Government that his acceptance of the amount of the judgment should be without prejudice to his moving for a further allowance. Before his motion was presented to the court the judgment was satisfied and paid. The court held that the payment was a full discharge and that sec. 1092 of the Revised Statutes (now sec. 178 of the Judicial Code, quoted above) was a bar to any further motion or proceeding. In the Frerichs case, the plaintiff obtained a judgment against the United States but there was some question as to whether payment of the judgment would be a full discharge of the obligation of the United States. This court held that it would be, citing sec. 1092 of the Revised Statutes.

Neither the Vaughn case nor the Frerichs case satisfactorily answers the question here. In the Vaughn case there was a judgment on the merits which was paid and it was sought to reopen the case for the purpose of getting an additional judgment *on the same claim*. In the Frerichs case it was simply stated that the payment of the judgment would be a full discharge of *the claim for which judgment was rendered*.

In the present case we have two claims, out of the large number of claims included in the original suit, which were eliminated from consideration, were not included in the agreed statement of facts adopted by the court as its findings of fact, and were not included in the judgment rendered. The judgment rendered was a final judgment and a full discharge *of the claims included therein*. These two bills now before the court were not included in that judgment.

That there may be a non-suit in proceedings before the Court of Claims cannot be doubted, although it is true that it serves no useful purpose and is rarely taken. In *Crowell vs. United States* (1870), 6 Ct. Cls. 23, the court refused to dismiss a suit for a defect in proof and remanded it for further proof, holding that although a non-suit would be the proper procedure the Government was not interested in obtaining a non-suit because there would be no costs recovered and such a judgment would not be a bar to a second suit. In *Book vs. United States* (1896), 31 Ct. Cls. 272, the court referred to the *Spicer* case and the rule that a judgment does not bar a second suit unless the decision is on the merits, and stated that judgments of non-pros and non-suit are not such judgments and never constitute an estoppel or a bar to a second suit.

BILL G-480.

As to this bill the argument is that appellant's failure to indicate that the acceptance of the Auditor's allowance for an amount less than claimed was under protest and with a purpose to proceed further, does not constitute a bar to a suit in the Court of Claims within the time allowed by the statute of limitations.

To make the issue clear we again state the facts. The plaintiff performed transportation service for the Government in October 1916. It presented its bill for $2,549.08. The Auditor for the War Department made a settlement on *May 10, 1920,* allowing payment to the plaintiff of $856.12 and disallowing $1,692.96. The plaintiff filed its suit to recover the balance claimed to be due, $1,738.48, on August 22, 1922, a little more than two years after the Auditor's settle-

ment and within six years from the time the service was rendered.

The Court of Claims held that "the failure to indicate that the acceptance of the Auditor's allowance was under protest and with a purpose to proceed further bars recovery in this suit."

We argue that the rule applied by the Court of Claims is incorrect and not in accordance with law (1) because it is contrary to the decisions of this court and the Court of Claims, and (2) because it has the effect of cutting down the jurisdiction of the Court of Claims, contrary to the statute conferring jurisdiction, by imposing a new statute of limitations less than the six years prescribed by section 156 of the Judicial Code.

1. It is contrary to the decisions of this court and the Court of Claims.

In *Finney vs. United States,* 32 Ct. Cls. 546, it was contended for the Government that the claimant's acceptance of the amount claimed less deductions made by the Government officers had the effect to estop him from asserting a claim for the amount deducted, to which the Court said:

> "But there is no language in the Act indicating that it was the intention of Congress to thereby deprive a claimant of his right to sue in this court, and unless the acceptance by the claimant of a less sum than that claimed was by way of accord and satisfaction, as the defendants contend, his right to sue in this court is open under the Act of March 3, 1887."

It is said that an accord and satisfaction is a method of discharging a contract or settling a cause of action

by substituting for such contract or cause of action an *agreement* for the satisfaction thereof, and the execution of such substituted agreement. 1 Ruling Case Law 177. It is a contract in itself and therefore necessarily it involves an agreement between the parties and a definite intention on the part of both to make the settlement final. If the creditor is to be held to abate his claim against the debtor it must be shown that he understood or should have understood what he was doing when he received the consideration claimed therefor. 1 Ruling Case Law 183.

To establish an accord and satisfaction in this case the Government must show that the parties *agreed* and that it was their *intention* to make the settlement by the Auditor a final settlement. And the same is true if it is sought to establish an abandonment of the claim by the plaintiff. "To create an abandonment there must not only be an omission to prosecute but an intent to forego." *New York Indians vs. United States,* 170 U. S., 1, 35.

When such questions arise, the burden is on the party pleading the accord and satisfaction, or the abandonment, of proving the intention. The fact that the party against whom the defense is raised has filed his suit within the period allowed by the statute of limitations is *prima facie* evidence that he has not abandoned his claim and the burden is on the other side to show that the intention was otherwise.

The findings of fact in this case do not show an accord and satisfaction or an abandonment of the claim by the plaintiff. The lapse of time alone is not sufficient because the plaintiff had an absolute right under the statute to the full time allowed for filing its claim. The exercise of a statutory right in the man-

ner prescribed by the statute cannot be taken as evidence of the abandonment of the right. *United States vs. American Bell Telephone Co.*, 167 U. S., 224, 246-247.

In *Oregon-Washington Railroad & Navigation Co. vs. United States*, 54 Ct. Cls., 131, affirmed by this court in 255 U. S., 339, it was held that where a carrier voluntarily stated its bills over a long period of years on the basis claimed by the Government to be correct, in accordance with rulings of the Comptroller of the Treasury, it could not thereafter recover the difference between the amounts billed and paid and the correct amounts due, and must be held to have acquiesced in the settlements and to have abandoned its claim for the full amounts due. But the court took pains to distinguish such a case from other cases in which the claimants asserted their full claims by presenting them to the Auditor for the War Department and also to point out that

> "Action by neither nor both of these classes of officers [the disbursing officers and the accounting officers of the Government] must be permitted to obscure the independent right of access to this court." 54 Ct. Cls., 138.

Referring to the carrier's action in voluntarily presenting its accounts to the disbursing officers on the basis claimed by the Government officers to be correct, the court said:

> "We have shown, we think, that they were in fact so stated because that was all that was claimed, and there was no intention to claim more, but if in fact the plaintiff believed more was due, and intended to claim more, it could easily do so by presenting its claim to the auditor, instead of

the disbursing officer, and in so presenting it it could claim commercial rates or whatever it saw fit to claim.

As to this procedure it is argued that it would have been fruitless because the auditor would have made the settlement at land-grant rates, disallowing the excess, and it was understood to be useless to appeal to the comptroller. True enough; and so far as payment was concerned the result would have been the same. But plaintiff, thus securing for itself the same actual payment, *would have been in the attitude of asserting, through the proper channels, its claim to compensation at a different rate; it need not have appealed to the comptroller if it regarded it as a vain thing, and the doors of this court were always open to it to test its right to recover what it had claimed and been refused* and to establish by precedent its rights as to future transactions. It would then have been in the attitude of suing *for something it had claimed and which had been refused it by the auditor,* and not of claiming something more on account of closed transactions as to which its course for many years had conformed to established practice and as to which it had been paid all it claimed." 54 Ct. Cls. (Our italics.)

This case is clearly not within the rule of the *Oregon-Washington Railroad & Navigation Co.* case, but is within the exceptions expressly stated by the court in its opinion in that case.

In this case the plaintiff's claim was stated in full to the Auditor for the War Department and it was in the attitude of asserting through the proper channels its full claim to compensation. It need not have appealed to the Comptroller if it regarded it as a vain thing (which it did), and the doors of the Court of

Claims were open to it to test its right to recover what it had claimed and had been refused.

This court, in its opinion affirming the decision of the Court of Claims in the *Oregon-Washington Railroad & Navigation Co.* case, 255 U. S., at page 347, said:

> "We are forced, therefore, to conclude that appellant's non-action was deliberate, based upon a consideration of its advantages, with no thought of ultimate assertion against the decision of the Government until stirred to acquisitiveness by the decision in the Chicago, Milwaukee & St. Paul case. * * * These views lead to an affirmance of the judgment upon the record as it now stands. It should be said, however, that they are based on the concessions of appellant to the action of the accounting officers."

In *Longwill vs. United States,* 17 Ct. Cls. 288, the court held that the rejection or disallowance of a claim by the accounting officers leaves the claimant free to sue in the Court of Claims, although he may have accepted the portion of his claim allowed by the accounting officers.

The rule applied in the present case is a departure from principles long regarded as settled. It is inexact and inconsistent and will lead to uncertainty and constant controversy. As applied by the Court of Claims it is an elastic rule which may or may not bar a claim depending on the peculiar facts of each case and the merit of the claim as it appeals to the court. The present attitude of the Court of Claims is indicated by its recent decision in *Penn Bridge Co. vs. United States,* decided October 20, 1924, wherein it said:

"Another question is presented. Plaintiff's im in the sum of $2,591.80 was settled in the General Accounting Office and as settled $1,675.30 was disallowed and $916.50 allowed, for which latter sum a Treasury check was sent to plaintiff. Plaintiff made application to the Comptroller General for a review of the settlement and therewith returned the check. This was in exact compliance with the practice under the Dockery Act, when the settlement was first made by an auditor from whom the appeal was to the Comptroller, and is perpetuated now with the substitution of a division in the General Accounting Office for the office of the auditor. An acceptance of the check sent would have precluded an appeal or review, as now designated, of the settlement. After the Comptroller General, upon review, had sustained the settlement as made the check was again sent to plaintiff who received it and cashed it, without further protest, and five months thereafter brought this suit. It is contended that by this acceptance without further protest the plaintiff estopped itself from recovery in this court and decisions of this court are cited in support of the contention.

We have denied recovery in a number of cases where settlements made by auditors have been accepted without protest and where long delay or other circumstances have justified the conclusion that there was acquiescence in the settlement as made, and we have rather stringently held to the rule, for reasons stated, that there must be some course of conduct repudiating the idea of acquiescence in the settlement. We adhere to the doctrine laid down in those cases and it may be said that, to the extent that the question has received the attention of the Supreme Court, this doctrine of acquiescence has met with approval. But the facts in each must determine whether it comes within the rule and we think this case does not."

There is no sanction in the law for such a rule. It is inconsistent with previous decisions of the Court of Claims and of this court, and, as we shall presently argue, with the statutes conferring jurisdiction on the Court of Claims and prescribing a period of limitation for the presentation of claims.

The cases cited in the opinion in support of the court's decision are not applicable, for the following reasons:

In *Chicago, Milwaukee & St. Paul Railway Co. vs. Clark*, 178 U. S. 353, 367, which was a suit on a construction contract, this court said:

> "And the cases are many in which it has been held that where an aggregate amount is in dispute, the payment of a specified sum conceded to be due, that is, by including certain items but excluding disputed items, *on condition that the sum so paid shall be received in full satisfaction*, will be sustained as an extinguishment of the whole." (Our italics.)

There is nothing in the findings of fact in this case to lead to the conclusion that the settlement made by the Auditor for the War Department was "on condition" that the amount paid must be accepted as in full satisfaction, or that the plaintiff accepted it in full satisfaction, or that the Auditor had any authority or any idea of imposing such a condition.

In *Savage vs. United States*, 92 U. S. 382, 388, the plaintiff was the holder of treasury notes due and payable. He demanded payment in gold, but the Secretary of the Treasury refused to pay in gold and offered payment in legal-tender notes. The plaintiff accepted payment in legal-tender notes and sued for

the difference in value between them and gold money. This court, affirming th Court of Claims, held that by accepting the medium offered and surrendering the treasury notes, the plaintiff waived his claim to payment in gold. The present case is not the same because here the dispute was over the amount due and there was no attempt on the part of the Auditor to force the plaintiff to accept a final settlement or to surrender its claim. In the *Savage* case the dispute was over the medium of payment and the Secretary of the Treasury refused to pay anything whatever except as a final payment and upon condition that the treasury notes be surrendered and canceled. He paid the full amount due, although in a different medium from that claimed by the plaintiff, and the plaintiff surrendered the treasury notes.

In *Pacific Railroad vs. United States,* 158 U. S. 118, 122, this court held that where Congress had made appropriations to pay a judgment with a proviso that the sums appropriated "shall be in full satisfaction of the judgment," etc., and the payment had been accepted by and paid to the plaintiff, it could not by another suit in the Court of Claims recover interest thereon, even assuming that interest were allowable under R. S. 1090.

2. *It has the effect of cutting down the jurisdiction of the Court of Claims, contrary to the statute conferring jurisdiction, by imposing a new statute of limitations less than the six years prescribed by Sec. 156 of the Judicial Code.*

By section 145 of the Judicial Code jurisdiction is conferred on the Court of Claims "to hear and determine * * * all claims (except for pensions)

founded upon * * * any contract, express or implied, with the Government of the United States."

By section 156, the jurisdiction is limited by the provision that every claim "shall be forever barred unless the petition setting forth a statement thereof is filed * * * within six years after the claim first accrues."

Under section 145, the plaintiff clearly has the right to sue for its compensation earned for transportation service. It follows, therefore, that under section 156 it has that right at any time within six years, provided it has not in the meantime *expressly* and *voluntarily* relinquished or abandoned its claim. The mere fact that it has in the first instance applied to the Auditor for the War Department for settlement of the claim and been paid a part of it by him, cannot have any effect on the right to sue in the Court of Claims, provided there has not been a voluntary surrender of the balance of the claim remaining unpaid.

If the circumstances are such that it appears there was such a surrender or an acquiescence in the reduced payment made or an acceptance of the settlement as in full (as may happen in some cases), then there is foundation for a ruling that the claim is barred, notwithstanding the fact that the petition may be filed within six years. But in order to bar a claim filed within six years it must appear that the claimant has voluntarily and intentionally surrendered it. In such cases the burden rests on the Government to show that there has been on the part of the claimant an intention to accept an administrative settlement as in full. The plaintiff should not be required to show *affirmatively* that it has *not* accepted the settlement as in full. Under the rule applied by the Court of

Claims in this case the burden is placed upon the plaintiff of proving affirmatively that it has not accepted the settlement as in full.

The lapse of time, even one day less than six years, cannot affect the plaintiff's right. The exercise of that right, which is a statutory right, in the manner prescribed by the statute, *i. e.*, the filing of suit within six years from the time the service was rendered, cannot be taken as evidence of the abandonment of the right. *United States vs. American Bell Telephone Co*, 167 U. S. 224, 246-247.

The rule was established in *Clyde vs. United States*, 13 Wall., 38, decided in 1871, that the Court of Claims cannot limit its jurisdiction by requiring a claimant to present his claim to an executive department before filing his suit in the Court of Claims. But that is substantially what the decision in the present case amounts to. The Court of Claims, although having original and independent jurisdiction, holds that because the plaintiff failed "to indicate that the acceptance of the Auditor's allowance was under protest and with a purpose to proceed further," it cannot now recover. Yet admittedly it might have sued in the Court of Claims to recover the full amount claimed without going to the Auditor at all, and the court would have had jurisdiction. The court now denies jurisdiction simply because the plaintiff did not do something more, although in fact and in law it was not required to do anything at all so far as the jurisdiction of the Court of Claims was concerned. The rule imposed by the court in this case and the denial of jurisdiction is contrary to the principle established in the *Clyde* case.

In the *Finney* case, 32 Ct. Cls. 546, it was held that

the right of a claimant to sue in the Court of Claims is dependent upon the act of Congress, and that unless his acceptance of a less sum than that claimed is by way of accord and satisfaction his right to sue for the balance claimed is open, under the statute conferring jurisdiction on the Court of Claims. It follows, therefore, that in cases where there is no evidence of an accord and satisfaction, the court cannot impose a rule indirectly requiring the plaintiff to sue within a certain time less than six years or otherwise to impose restrictions on his right to sue in the Court of Claims.

The *Oregon-Washington R. & N. Co.* case, 255 U. S. 339, is not in conflict with this argument. In that case the plaintiff voluntarily relinquished its claim *at the time it submitted its accounts on a net land-grant basis,* and consequently, from the moment those accounts were settled and paid, it had no standing in court because it had no claim on which to sue. There was no question of waiting two years or more; it was all over the moment the settlements were made. But in this case the plaintiff had not lost its right to proceed further when the Auditor made his settlement and disallowance. The plaintiff had then surrendered nothing. It might have appealed to the Comptroller of the Treasury. It might have filed suit immediately in the Court of Claims. It had one year within which to appeal to the Comptroller, if it chose to do so, although such an appeal was not necessary to give jurisdiction to the Court of Claims. It had six years (or supposed it had six years), from the time the service was rendered, in which to sue in the Court of Claims. The claim was not extinguished by the Auditor's settlement.

The judgment of the Court of Claims should be reversed and it should be directed to enter judgment for the plaintiff for the amount shown to be due.

Respectfully submitted,

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